

Appl. No. 10/632,407
Docket No. T-707 (Z-03467)
Amdt. dated January 16, 2007
Reply to Office Action mailed on November 9, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 16 and 23 have been canceled without prejudice. Claims 1-15, 17-22, and 24-25 are currently pending in the application. Claims 24 and 25 are newly presented. Claim 24 is similar to original claim 1, and includes a capsule concentration level of from about 0.05% to about 3%, by weight based on the weight of the capsules. Support for new claim 24 is found in the as-filed specification, including, for example, on page 7, lines 13-17. New claim 25 is also similar to original claim 1, with further recitation of the capsule size being from 0.5 to 1.5mm. Support for claim 25 can be found, for example, on page 7, lines 20-21. No new matter has been entered.

Claims Rejections

Claims 1-15 and 17-23 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Angelone, Jr. *et al.* (U.S. Patent No. 5,587,153; hereinafter "Angelone") in view of Nichols (U.S. Patent No. 5,000,947; hereinafter "Nichols"). Applicants respectfully disagree.

Angelone discloses clear gel-type cosmetic products, but is silent regarding employment of visible capsules. Nichols discloses shaped articles made from compacted liquefiable powder. The liquefiable powders can contain various agents, such as, for example, colorants, emollients, and moisturizers. The powder is compacted to form shaped articles, such as cakes, sticks and other compacts.

Independent claim 1 is directed to a clear gel antiperspirant composition having a plurality of visible capsules dispersed therein. The capsules are explicitly recited as being "dispersed" in the composition. An illustration of this recited feature can be seen in Figure 1. Nichols discloses compacting liquefiable powder particles together into a mass to form shaped articles. Thus, Nichols teaches packing or bringing individual powder particles in close proximity to one another, which is the opposite of dispersing particles within a carrier material. Nichols teaches away from arranging the powder particles in a non-packed manner. And Angelone doesn't suggest incorporating visible particulate material into its compositions. Accordingly, the prior art taken as a whole—a clear gel composition free of visible particles and a personal care article defined by a mass of

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compacted powder particles—does not lead to the invention recited in independent claim 1.

Moreover, there is no motivation or suggestion to combine the teachings of Nichols and Angelone. The Examiner, in the previous Office Action (mailed June 30, 2006) stated that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the visible cellulosic capsules of Nichols into the antiperspirant or deodorant compositions . . . in view of the teaching of Nichols that said cellulosic capsules are known to be used in personal care compositions such as antiperspirants or deodorants.” Applicants point out that Nichols teaches including antiperspirant or deodorant active agents within the cellulosic particles that are compacted together to form a shaped article. Nichols does not however, teach employing the cellulosic particles into a antiperspirant composition comprising a solubilized antiperspirant salt. And, as noted above, Angelone is silent regarding employment of visible particles in its gel composition.

Claims 5-8 recite various hardness and hydration levels of the visible capsules. The Examiner states that “with respect to the properties claimed in claims 5, 7, and 8, it is the examiner’s position that since the instant compositions are disclosed that said properties would be inherently possessed by the referenced compositions.” For a prior art disclosure to inherently read upon a claimed parameter, the prior art must necessarily possess the parameter; it is not enough for the prior art disclosure to potentially possess the parameter. Nichols discloses cellulosic particles. The instant application also discloses cellulosic particles, but explicitly states that “[i]n many cases cellulosic capsules are generally too hard, as supplied, for use in personal care products” (see page 5, lines 28-29). This acknowledgement would tend to cut against the high threshold for inherent anticipation.

In view of the foregoing, Applicants respectfully submit that claim 1 and the claims depending therefrom are patentably distinct from the applied references taken as a whole.

Independent claim 15 is directed to a method of manufacturing a personal care composition containing visible capsules, comprising the steps of pre-hydrating hydratable capsules and incorporating the pre-hydrated capsules into a personal care composition. Claim 15 has been amended to clarify that the hydrating step is conducted on already

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manufactured capsules. The Examiner states that “[t]he capsules of the prior art are exposed to liquid prior to incorporating them into the composition.” Applicants submit however, that the liquid exposure takes place during the manufacturing of the cellulosic powder in the Nichols reference (*see Examples 1 and 2*). In view of the amendment and the foregoing discussion, Applicants respectfully request reconsideration and withdrawal of the Section rejection to claims 15-22.

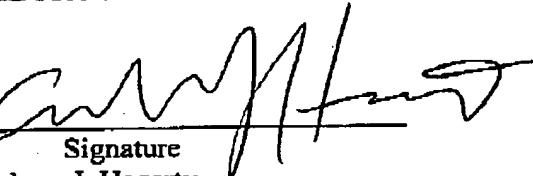
Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1-15, 17-22, and 24-25 are all respectfully requested.

Respectfully submitted,

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